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Iditarod National Historic Trail Advisory Council

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Proceedings of the

Iditarod National Historic Trail Advisory Council Meeting

October 26-27, 1992

Nome, Alaska

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Anchorage District Office
6881 Abbott Loop
Anchorage, Alaska 99507
Telephone: (907) 267-1246

The following is a true and correct summation of the Iditarod National Historic Trail Advisory meeting held October 26 - 27, 1992.

Leo Rasmussen
Chairperson

Richard Vernimen
Anchorage District Manager

Iditarod National Historic Trail
Advisory Council Meeting
Nome, Alaska

AGENDA

Monday, October 26, 1992

8:35 am	Arrive Nome Check in at Sitnasuack Apartments (907) 443-5296
	Walking tour of Nome
	Visit gold dredge and Iditarod Trail by bus
	Lunch in Nome
	Continuation of Iditarod Trail trip
6:00 pm	Dinner
7:30 pm	Dessert at *Leo Rasmussen's* house (Nome city council members, Native corporation members in attendance)

Tuesday, October 27, 1992 Nome City Hall

9:00 am	Introduction *Dick Vernimen, Anchorage District Manager* *Leo Rasmussen, Council Chairperson*
	Review of Meeting Minutes
	Trail Marking & Shelter Cabins *Mike Zaidlicz, Trail Coordinator*
	Cultural Issue(s) *Julie Steele, District Archaeologist*
12:00 pm-	Lunch
1:30 - 2:30 pm	Public Comment
	Interpretation of Trail *Gene Ervine, Interpretive Specialist*
	Implementation Plan *Mike Zaidlicz, Trail Coordinator*
4:45 pm	Conclude Meeting *Leo Rasmussen, Chairperson*
6:15 pm	Depart Nome
7:40 pm	Arrive Anchorage

Minutes

Minutes for the
Iditarod National Historic Trail Advisory Council Meeting
October 26-27, 1992
Nome, Alaska

October 26, 1992

The Iditarod National Historic Trail Advisory Council took a 32-mile field trip along the Iditarod Trail which began in Nome and proceeded east on a snowy road along the Norton Sound. Council chairperson Leo Rasmussen explained historical and modern day facts about the trail and area. A tour was made to a huge gold dredge (Alaska Gold Dredge No. 5) operating on the outskirts of Nome. It's operation was explained by mining company executive and Nome mayor John K. Handeland.

Although the area had suffered from a recent storm, the road was intact. The council saw Native elders ice fishing for tom cod, visited the Solomon Roadhouse and the Solomon-City Railroad and traveled an area once inhabited by a major Native community 800 - 2,000 years ago.

Later that evening, Rasmussen held a reception at his home for the advisory council members and interested members of the community.

October 27, 1992
Nome City Hall Chambers

Anchorage District Manager Dick Vernimen called the meeting to order and introductions were made which included:

Council members: Leo Rasmussen, Judy Bittner, Greg Bill, Lois Reeder, Duane Harp, Chuck Diters, Joe Redington, Sr., Irene Anderson and Dan Seavey.

BLM staff: Dick Vernimen, Anchorage District Manager; Clint Hanson, Assistant District Manager for Resources; Mike Zaidlicz, Iditarod Trail Coordinator; Julie Steele, Cultural Resources Specialist, Danielle Allen, Public Affairs Specialist; Gene Ervine, Interpretive Specialist; Herb Brownell, Acting Kobuk District Manager, Norm Messenger, Nome Field Manager; and Mike Billbe, Kobuk District Ranger.

Public: Guy Martin, Land Planner for Bering Straits Native Corporation and Mark Cardinal, Reporter for Nome Nugget.

Previous minutes were approved per corrections made by Lois Reeder, Dan Seavey and Judy Bittner.

Vernimen began by saying the State of Alaska will make its final land entitlement selections before December 1992. They have 18 million acres left to select and they will be looking at high value (mineral) lands. The Iditarod Trail is not totally withdrawn and their selections could include lands containing portions of the trail system.

Rasmussen asked the status of a 1:63,000 U.S. Geological Survey map depicting the Iditarod Trail. Duane Harp said the Forest Service is using the Global Positioning System (GPS) to do all its recreation trails. Irene Anderson asked the Iditarod trail be plotted by GIS Mike Zaidlicz said 160 maps must be digitized before that can happen. A volunteer and RAPs student digitized 25 maps for the Iditarod Trail at the BLM Anchorage District last summer. More will be done depending on budget. It was suggested the BLM make digitizing the maps a priority and recruit a volunteer to do the digitizing. Joe Redington said he knew of a surveyor who could volunteer his services using a GPS unit. He will get the name of the person to Danielle Allen.

Lois Reeder pointed out the impending state land entitlement selections and proposed Mental Health Land Trust selections on state lands, as examples of the immediate need to identify and map the precise location of the Iditarod and connecting trails. The best chance of securing a 1,000-foot trail reservation is before conveyances are made to the state, and before the state conveys to Mental Health. Reeder suggested, BLM's responsibility as lead agency is to make sure appropriate trail reservations are considered in such negotiations. This will only be successful with precise mapping.

Zaidlicz gave the council an update on BLM trail marking and shelter cabin construction. He displayed a map of Alaska showing BLM shelter cabins. Zaidlicz was asked that a map be produced showing all shelter cabins along the trail. He told of BLM's latest shelter cabin, called the Bear Creek shelter cabin, constructed last summer within the Farewell Burn. Materials for the cabin cost $12,000 and transporting of those materials cost the BLM $40,000. A helicopter slung 11 loads to the construction site. Due to the cost, BLM was unable to replace the Old Woman cabin at Unalakleet. The site for the new shelter cabin, however, was selected, flagged and surveyed. Plans are for the Old Woman shelter cabin to be constructed during the summer of

1993. He also said new regulations require all new shelter cabins be handicap accessible. The council members expressed dismay at the high cost of putting in the cabin. They reasoned villagers could build the cabins cheaper or villagers may be encouraged to volunteer their time to the project. Materials could be snow machined or flown by Hercs to the site to further reduce costs. Minor cleanup was done at the Tripod Flats shelter cabin and 56 gas drums were found at the Rohn River cabin. BLM is asking the National Guard to transport the drums out.

Guy Martin spoke about the situation at Taylor Lagoon where the Iditarod Trail crosses Native grave sites. He spoke about the process he went through to have remains reburied and the trail rerouted so as not to further desecrate the sites.

Zaidlicz said Dan Seavey has had problems with the City of Seward trying to annex parts of the Iditarod Trail north of Seward. Seavey should be commended for getting the Kenai Borough to reserve 1,000 foot corridor of trail through the Kenai Borough. It's a notable accomplishment.

Zaidlicz told the council of his participation at the 11th Trails Symposium in the lower 48. He said the symposium's stated goal was to establish a recreation trail within 15 minutes of all Americans. It was proposed that events be planned commemorating the 25th anniversary of the National Trails Act on June 5, 1993.

Zaidlicz has submitted five Iditarod Trail projects which could be funded under the Intermodal Surface Transportation Efficiency Act (ISTEA). The projects include signing, feasibility study for an Iditarod Visitor Center, construction of cabins and funding for cultural resource projects.

He said some trail marking and maintenance work occurred around the Tripod Flats and Bear Creek shelter cabins. Joe Redington asked a shelter cabin be built at the old Rabbit Lake roadhouse site which is on State land.

Seavey questioned the reasoning of spending $104,000 on two shelter cabins. Anderson countered the villagers at White Mountains and Nikolai (where there are lots of trees) would be willing to build cabins at less that cost. The project could be spread over two years and would probably require snowmachines.

Rasmussen asked a committee be assembled to look into the most efficient means of constructing cabins. He also said the scope of the agencies must change because the same problems are before

them today as there were five years ago. We must move forward and begin implementing things identified in the comprehensive plan.

Anderson asked if a volunteer organization wanting to do a project for the trail should contact Zaidlicz even if the project isn't on BLM land. Response: Zaidlicz coordinates all efforts on the trail.

Norm Messenger said BLM couldn't respond to a volunteer project presented by the Nome Kennel Club because of short notice. He said BLM needs to be more prepared to respond to likely projects.

Martin said there must be a system which allows individuals to find timely solutions to problems occurring on the trail. It doesn't matter whose land it is. His example was the Taylor Lagoon situation which took five years to resolve.

Julie Steele reminded the council the BLM is restricted in what it can accomplish by a lack of money.

Judy Bittner said she appreciated Martin's persistence in resolving the graves issue but asked what did he learn. Martin responded by saying he had good cooperation after talking to all players which included the State of Alaska, Fish and Wildlife Service, BIA and BLM. He organizes a village land managers meeting where information is distributed among the Native corporations. Information sent weekly to the corporations can include information on the Iditarod Trail at the same time.

Seavey wanted to know the status of the resolution 89-10 which proposes inclusion of the Seward/Crow Pass connecting trail into the national trails system. The lack of its designation as a connecting doesn't allow him the ammunition to fight off the city of Seward's annexation attempts. Rasmussen said other connecting trails need to be included in the system.

Vernimen asked the Forest Service to work on the proposal so BLM could forward it through the proper channels and it be included in the national trail system.

Greg Bill asked if resolutions could fall through the cracks and Bittner said the council needs to know where it stands with the resolutions.

Lois Reeder said a compilation of resolutions is needed for tracking.

Bill was informed that the Iditarod Trail Committee and Iron Dog association could assist with putting up reflectors/markers.

BLM can permit trail activities on public easements and only on the 400 miles of public land it manages.

Julie Steele, the cultural resources specialist, began her presentation by saying the cooperative agreement is in place for the State of Alaska historians to continue work on the multiple property nomination contexts. It's taken several months to get the agreement through the BLM procurement office. The historians have updated site files for the Alaska Heritage Resource data base. Other agencies will use the files to check site locations when doing cultural resource compliance work. Three historical contexts are in draft form and will be distributed when finalized. A BLM historian is working on a community development context for the Nome and Kaltag portion of the trail. The contexts covering the Chugach National Forest are in draft but contract disputes are holding up final completion.

Steele says the new bonding requirements for miners to ensure reclamation has soured BLM's relationship with miners in Flat. As a consequence, it may be more difficult for BLM to get cooperation from the community. For an example, a resident removed the roof from the Alaska Commercial building in Iditarod. The building was in good shape, is a landmark and is often used as a shelter. Without a roof, the historic AC building will deteriorate. Council members asked the historic building be saved. It was proposed a resolution be developed asking the State to reroof the building and policy be developed for the treatment of Iditarod historic properties.

It was reported the State Department of Transportation has asked for an appropriation to upgrade the old road from Flat to Iditarod. Since no one lives in Iditarod, a road would make the area more accessible to vandals. On the positive side, the road would be good for those wanting to see the historic area.

It was requested the Department of Transportation come to the council's next meeting and give an update on their DOT six-year plan.

Anderson said the Council should be aware the road from Poorman to Ophir and the Parks Highway to McGrath which will have a positive affect on the historic trail.

Bittner said she will discuss with the Division of Lands protection of historic properties in remote areas. People could be informed by mail about laws governing historic buildings.

Someone should talk to the person who took the roof off the AC building.

Martin said there is a process to follow when violations like the AC store occur. It involves problem identification, planning, remediation and implementation as found in the Code of Federal Regulations.

Bittner said we must talk to the locals to have them buy into what we are doing. Local residents must be educated about their history.

Seavey asked a meeting be scheduled to take care of the matter immediately. The same person who took off the roof could return by snowmachine in the winter and take the rest of the building.

Rasmussen said that if nothing is going to be done about preserving properties there isn't any reason to send letters or put up signs.

Redington said properties must be preserved and people should respect them.

Rasmussen asked if the process should be changed?

Bittner said she's trying to get the state to have a gold rush task force which could concentrate its efforts on restoring and preserving Alaska's gold rush trails and historic properties.

Bill re-emphasized the necessity of saving the AC store.

Anderson suggested talking to ALASCOM who could have Jay Hammond visit Iditarod. A tremendous amount of publicity could be generated and bring to light the issue of historic properties.

Seavey said when evaluating properties for restoration it should be asked —how many restoration projects will there be? are they necessary? and what are they for? He also said we

could use and restore prominent properties but can't preserve them all. We need to tie use with the race and set priorities.

Steele said BLM wouldn't argue for total restoration but it's important that artifacts be secured.

Diters said planning should be at the forefront. A recommendation could be forwarded recommending immediate stabilization of the AC building

Vernimen said a group of volunteers should be assembled to tackle the problem.

Bill said the AC building is important to Iditarod. After all, the trail is named after Iditarod. The 125th anniversary of AC occurs next month and AC might be interested in doing something.

Anderson said Jim Campbell would be the person to contact for help.

Bill said a shelter cabin is needed at Iditarod.

Rasmussen said we're about to see an explosion in the public's interest in recreation trails. It's one of the fastest growing industries. Steele said for instance, Keppler in Flat, who runs the post office says many people who fly into Flat want to be taken to Iditarod because of its historic significance and the trail.

Rasmussen envisions a ranger being stationed at Iditarod some time in the future.

Redington said when he goes out on the trail he is prepared but many people aren't. He gave a list of places where shelter cabins could be located. They included: Rabbit Lake, Rainy Pass (just beyond Puntilla Lake), Cripple, Placerville, Iditarod and some a spot between Iditarod and Shageluk. Every 100 miles would be an ideal location for a shelter cabin.

Bittner said three areas to concentrate the council's attention should be building cabins, trail marking/survey and restoration.

Anderson wants more BLM staff to go to the villages to build better relationships with the villagers. Knowing the locals will help get Trail projects accomplished.

It was suggested that BLM staffers volunteer for the Iditarod Trail Committee so they could take advantage of the transportation afforded volunteers during the race.

Redington said although stretches of the trail lack timber, there are many places that have timber where locals could go in and construct a cabin for about $10,000.

A Scenic Transportation Enhancement Program video was shown highlighting projects that could be undertaken under the program.

A field video taken by the U.S. Fish and Wildlife Service was shown of the Taylor Lagoon grave sites. Sixteen burial sites were identified on state land. A dozen were disturbed with some bones exposed. Housepits were also at the site. The graves were marked with driftwood and the trail was rerouted.

Martin said the Taylor Lagoon is a 14(h)(1) site on state land. He asked the site be rated higher on the conveyance priority list.

Bittner distributed DOT open house schedule for ISTEA.

Reeder provided a status report on the Alaska Mental Land Trust settlement proposal adopted by the state legislature in May 1991. She distributed a chronology of the Trust issue, including ensuing litigation and settlement proposals. She reported the Mental Health plaintiffs and the state are moving ahead with nominations for land exchanges in the event the proposal is eventually approved by the court. Of possible concern to the council, are nominations in the Ophir area. Reeder will provide BLM with maps showing where the nominations are. She strongly recommended that if the Iditarod or any connecting trails are located within the area nominated for possible conveyance to the trust, either in the Ophir region or anywhere else, that BLM bring this to the attention of DNR so that the appropriate 1,000-trail reservation can be reserved. She stated that the state has indicated that once land is conveyed to the trust, it will then be treated as private land, and trail reservations will no longer be possible.

She asked that the resolution on Mental Health Land settlement proposal be forwarded as soon as possible to Commissioner Glenn Olds, Department of Natural Resources (DNR); Ron Swanson, Director, DNR Division of Lands; and Bruce Phelps, Project Manager, DNR Mental Health Settlement Unit.

to Bruce Feltz, Ron Swanson and Commissioner Glenn Olds.

Council asked that resolutions be forwarded immediately to the State Director. The minutes can follow later.

Vernimen said the minutes will be completed within 30 days.

Gene Ervine, interpretive specialist from the Alaska State Office explained the interpretive planning team's efforts to date. The group has collected interpretive information and met with people at Seward, Knik and Nome. Upcoming projects include a media packet, wayside exhibits and slide show/video.

Bittner said schools want fact sheets about the Iditarod Trail. They could be done geographically and could highlight checkpoints. At checkpoints, a historic figure could be profiled.

Bill said the Iditarod Trail Committee sends out 3,000 information packets on the trail each year. Much of the information is for children. Press packets are distributed and Bill will send BLM a copy of this year's press packet. Shelly Gill is developing a lesson plan on the trail for children which is used nationwide.

BLM will develop their own press packet with historical information which will complement the trail committee's.

Harp said the Forest Service will meet with The Alaska Railroad about interpretation on the train from Seward to Anchorage.

Zaidlicz explained the items in five-year implementation plan are not in priority listing. They serve as a guide for BLM to proceed with potential projects. He asked the Council send their comments on the plan to him by November 17.

Bill asked the BLM schedule council meetings at least twice a year. He was appreciative of the field trip. He had been to Nome many times before and he learned a lot on this trip. He was disappointed that there was a lack of public comment on the Iditarod Trail.

Rasmussen said something has to be done before the public will show much interest.

Anderson wants a GIS map done of the trail.

Rasmussen expressed concern about gathering oral histories from people who were associated with the trail during the early days. He said a good person to interview would have been the 90-year old Minnie Fagerstrom sitting in the bus passed by the Council during the tour of the Iditarod Trail.

Steele reassured Rasmussen that many oral histories are on file and she will circulate the list.

Rasmussen said Freda Larson would be a good person to interview because she remembers the diphtheria outbreak as a young girl.

Harp said its a good idea to develop the trail for year-round use. In 1994, Operation Raleigh, an international service group which does conservation projects throughout the world, will return to the Chugach Forest and work on a section of the Iditarod for the Forest Service.

Bill asked the council be used to accomplish things that the BLM can't do. They may be able to circumvent the cumbersome process.

Reeder suggested the next meeting be held in Knik, and offered her help in arranging such a meeting. Bill agreed and said the council could meet at the Iditarod Trail office.

Rasmussen called the meeting to a close.

Resolutions

Resolutions

INHT Council Resolution 92-06

Whereas, the INHT Advisory Council facilitates its business by formulating resolutions, and

Whereas, the INHT Advisory Council needs to regularly review previously adopted resolutions in order to

1. avoid adopting new resolutions which might be redundant or conflicting,
2. track appropriate action on resolutions, and
3. delete resolutions that are no longer pertinent.

Therefore, be it resolved, that the BLM staff provide the council members with a compilation of all past resolutions and which is regularly updated.

INHT Council Resolution 92-07

Whereas, the Iditarod Trail is an important element of the history of the Kenai Peninsula; and

Whereas, the Kenai Peninsula Borough Assembly has been proactive in protecting and supporting the Iditarod National Historic Trail; and

Whereas, on August 18, 1992, the Kenai Peninsula Borough Assembly passed a resolution affirming support for public use and establishing a 1,000-foot management corridor for that portion of the Iditarod National Historic Trail on Borough land;

Therefore, be it resolved, that the Iditarod National Historic Trail Advisory Council sincerely thanks the Kenai Peninsula Borough Assembly for its continued commitment and support of the trail.

INHT Council Resolution 92-08

Whereas, the State of Alaska will be commemorating the centennial celebration of the Gold Rush Era in the decade of the 1990's,

Whereas, the Iditarod National Historic Trail played an important role in the state's Gold Rush era, and

Whereas, it is important to coordinate with the state in identifying opportunities, sites and activities to highlight the role of the Iditarod Trail during the Gold Rush era,

Therefore, be it resolved, that the INHT council requests that the Secretary of Interior coordinate with the State of Alaska in developing plans for the commemoration of Alaska's Gold Rush era.

INHT Council Resolution 92-09

Whereas, there are identified needs for large capital expenditures to fulfill the objectives of the INHT comprehensive Management Plan and Implementation Plan,

Whereas, many trail partners have now signed cooperative agreements for trail management,

Whereas, there is a need to pool efforts to effectively and efficiently 1) build shelter cabins, 2) locate, survey, mark and map the trail, and 3) restore and stabilize selected historic properties along the trail,

Therefore, be it resolved that the INHT Advisory Council requests BLM to organize a meeting with major trail managers to develop a priority list of projects to submit to funding sources.

INHT 92-10

Whereas, 1993 is the twenty-fifth anniversary of the National Trails Act,

Whereas, June 5, 1993, has been designated National Trail Day, and

Whereas, the Iditarod National Historic Trail was established under this Act in 1978 and

Whereas, it is the intent of National Trails Day to celebrate and focus attention on the nation's trail system.

Therefore, be it resolved, that the INHT Advisory Council urges all trail partners and other interested individuals and organizations to plan events for National Trails Day celebrating the Iditarod National Historic Trail.

INHT 92-11

Whereas, the roof of the historic Alaska Commercial Company store at Iditarod, Alaska, was removed earlier this year,

Whereas, this building is an historically significant structure related to the INHT and located in the historic town that gives the trail its name,

Whereas, the State of Alaska appears to be the owner of this property,

Therefore, be it resolved that the Iditarod National Historic Trail Advisory Council urges the State of Alaska, Department of Natural Resources, to repair the roof of the historic Alaska Commercial Company store at Iditarod in order to stabilize the building until further plans can be made for its preservation or recordation. The Council further urges the State to develop plans to prevent further degradation to the historic remains at Iditarod.

Publicity

A meeting of the

Iditarod National Historic Trail Advisory Council

will be held

at the Nome City Hall

in Nome, Alaska

9:00 am - 5:00 pm

Tuesday, October 27, 1992

The meeting is open to the public and comments from the public will be taken from 1:30 pm - 2:30 pm. Agenda items include trail marking and shelter cabins, five year implementation plan and interpretive plan.

For more information call BLM Iditarod Trail Coordinator, Mike Zaidlicz at 267-1307.

Published in the Nome Nugget
WK of Oct 18 issue

BLM news release

Bureau of Land Management U.S. Department of the Interior

for further information contact:
Danielle Allen, 267-1258 (Anchorage)/443-2177 (Nome)
Mike Zaidlicz, 267-1207/443-2177

release number: ADO-01
date: October 25, 1992

Iditarod Advisory Council to Discuss Implementation Plan in Nome

The Bureau of Land Management's Iditarod National Historic Trail Advisory Council will conduct a meeting in Nome at the Nome City Hall on Tuesday, October 27, 1992.

A key item of discussion will be a draft implementation plan for the Iditarod National Historic Trail. Mike Zaidlicz, the BLM Trail coordinator and author of the plan says, "It will give the BLM guidance on how to proceed with accomplishing tasks outlined in our comprehensive management plan for the next five years. " These action items include acquiring rights-of-ways, creating more cooperative management agreements with boroughs and Native corporations, standardizing trail markers and developing a shelter cabin system.

Other meeting agenda items include interpretation of the trail, cultural and lands issues, and trail marking and shelter cabins.

A field trip of the Iditarod Trail on Monday precedes the council's formal meeting on Tuesday.

The eleven-member council advises the BLM on the management of the historic Iditarod Trail.

# # # #

Handouts

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

STEP Open House Schedule

Date	Time	Community	Location
10/27	8 am - 2 pm	Ketchikan	Visitor's Center Rotary Lunch
10/28	8 am - 11:30 am	Wrangell	City Hall
10/28	1:00 pm - 5 pm	Petersburg	Council Chambers
10/29	12:30 pm - 4 pm	Sitka	Centennial Bldg
10/30	4:30 pm - 8:30 pm	Haines	Council Chambers
11/2	9 am - 1 pm	Nenana	Library
11/2	3 pm - 7 pm	Fairbanks	Noel Wien Library
11/3	9 am - 1 pm	Delta Junction	Conference Room
11/3	4 pm - 7 pm	Tok	Tok Lodge-Alcan Room
11/4	10 am - 1 pm	Glennallen	Caribou Cafe
11/4	5 pm - 8 pm	Valdez	Council Chambers
11/6	8 am - 3 pm	Fairbanks	DOT&PF Offices
11/9	12 noon - 2 pm	Nome	Visitor Center-tentative
11/10	11 am - 3 pm	Dillingham	City Chambers
11/13	5 pm - 8 pm	Juneau	City Chambers
11/16	1 pm - 5:30 pm	Kodiak	City Chambers
11/17	9 am - 1 pm	Talkeetna	Swiss Alaska Inn
11/17	3 pm - 7 pm	Palmer/Wasilla	Borough/1st Fl. Conf. Rm
11/18	10 am - 2 pm	Seward	City Council Chambers
11/18	4:30 pm - 7:30 pm	Soldotna/Kenai	Kenai Visitor's Center
11/19	TBD	Anchorage	TBD
11/20	8 am - 4 pm	Anchorage	DOT&PF Offices

Introduced by: Sewall & Skogstad
Date: 08/18/92
Adopted: 8/18/92
Vote: Unanimous

KENAI PENINSULA BOROUGH
RESOLUTION 92-97

A RESOLUTION AFFIRMING SUPPORT FOR PUBLIC USE AND ESTABLISHING A MANAGEMENT CORRIDOR FOR THAT PORTION OF THE IDITAROD NATIONAL HISTORIC TRAIL ON BOROUGH MANAGED LAND

WHEREAS, the Iditarod Trail was one of the first National Historic Trails selected when Public Law 95-625 (the National Parks and Recreation Act) was signed by the President on November 10, 1978, and that Act specifically named the Iditarod Trail as a National Historic Trail; and

WHEREAS, Kenai Peninsula Borough Resolution 85-9 designates the route of the Iditarod National Historic Trail through the Kenai Peninsula Borough; and

WHEREAS, the Kenai Peninsula Borough manages the Iditarod National Historic Trail within its borders in accordance with a Memorandum of Understanding between the Kenai Peninsula Borough and the Bureau of Land Management, U. S. Department of the Interior, following the guidelines of the National Comprehensive Management Plan; and

WHEREAS, the Kenai Peninsula Borough manages lands along the Seward to Moose Pass segment of the Trail and along public use access improvements and side trails constructed and maintained by the Iditarod Trailblazers, Seward Chapter;

NOW, THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That the Kenai Peninsula Borough continues to support opportunities for outdoor recreation and public enjoyment of the Iditarod National Historic Trail which are compatible with the integrity of the route and are not destructive to the cultural and natural resources associated with the Trail.

SECTION 2. That, in accordance with the Memorandum of Understanding between the Kenai Peninsula Borough and the Bureau of Land Management, the Borough agrees to protect continued public use of the Trail, and in keeping with the Iditarod National Historic Trail Comprehensive Management Plan, Trail Corridor Guidelines, will establish a one thousand foot corridor for those sections of the Trail under Borough management.

SECTION 3. That this resolution shall take effect immediately upon its adoption.

ADOPTED BY THE KENAI PENINSULA BOROUGH ASSEMBLY THIS 18th DAY OF AUGUST, 1992.

Betty J. Glick, Assembly President

ATTEST:

Gaye J. Vaughan, Borough Clerk

United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Kobuk District Office
1150 University Avenue
Fairbanks, Alaska 99709-3844

TAKE PRIDE IN AMERICA

IN REPLY REFER TO:
8351 (070)

2 OCT 1992

Memorandum

To: District Manager, Anchorage District Office (AK-040)

From: District Manager, Kobuk District Office (AK-070)

Subject: INHT Implementation Plan

We have reviewed a draft copy of the Iditarod National Historic Trail Five Year Implementation Plan that you provided for us. We have the following comments:

Introduction:

Consider inserting the "Management Goals and Objectives" identified in the INHT Comprehensive Management Plan in order to emphasize the primary goal of the plan which is to protect significant segments, historic remnants, and artifacts for public use and enjoyment.

BACKGROUND

C: CURRENT ISSUES

After reviewing this section; we are assuming that the tasks are listed in order of priority and that they would be implemented in that order as determined by available funding. In that light, please consider reordering the tasks: Task 1- cultural resource management, Task 2 - Iditarod Trail survey and easement reservations, Task 3 - permitting and trail monitoring , Task 4 - cooperative management and volunteer agreements, Task 5 - trail marking, Task 6 - interpretation, and Task 7 - shelter cabins. Consider deleting the following tasks: advisory council meetings, new trail segment designations, and gift catalogs/partnerships/friends groups.

IDITAROD TRAIL SURVEY AND EASEMENT RESERVATIONS

Action Items:

1.6 (Add the following) Bureau personnel would travel the entire length (in stages) of the INHT to aid in the determination of: a) INHT center line, b) develop first person knowledge of winter travel and how it may affect easement management, and c) the development of marking techniques (i.e. standards and placement of trail markers).

TRAIL MARKING

Action Items:

4.3 (Add the following) Locate a commercial source of spruce poles which can be packaged and shipped to Nome for use as trail markers in treeless areas. Provide shipment to Nome and helicopter transport to field locations of three hundred or more spruce poles per year throughout this five year period.

INTERPRETATION

Action Items:

5.7 (Add the following) Develop a trail guide designed to aid the first time INHT user. The guide would be developed as a cooperative effort between all agencies.

5.8 (Add the following) Develop computer driven interactive videos for incorporation into the APLIC in Anchorage and the city operated visitor center in Nome.

SHELTER CABINS

Action Items:

6.7 Contact individual owners of cabins located along the trail who may be willing to allow for the use of their cabins as shelter cabins in return for donations of material and labor for maintenance.

PERMITTING AND TRAIL MONITORING

Background:

Add the following sentence: "There is evidence of other use of the INHT between Nome and Unalakleet which may be both commercial and recreational in nature."

Action Items:

8.5 (Add the following) Include INHT monitoring a priority winter activity for the Nome Field Office.

We appreciate the opportunity for commenting on this document which is an excellent beginning for this effort. Please contact us as necessary in order for us to assist in developing project-specific cost estimates for the development of a comprehensive implementation plan. However, we are concerned that current district wide priorities and funding constraints would not allow KDO personnel the flexibility to be involved as deeply as the Implementation Schedule And Cost Phasing section of this document infers.

acting DM-K

DRAFT

IDITAROD NATIONAL HISTORIC TRAIL
FIVE YEAR IMPLEMENTATION PLAN

Introduction:

In 1978 Congress designated the Iditarod National Historic Trail (INHT) as a component of the National Trails System. Since that time much has been accomplished in trail management, maintenance, and public outreach. However, much still needs to be done. This plan will outline tasks, due dates, and responsibilities for the accomplishment of needed work along the Iditarod trail. Nothing within this plan is to be construed as obligating the various agencies, municipalities, entities or corporations to expend funds, manpower or equipment toward these ends. This plan is merely a guide to what needs to be done and a suggested means for accomplishment.

BACKGROUND

A: Status of INHT Plan Accomplishments - 1986 until 1992

The INHT comprehensive management plan was approved in 1986. It was designed to identify trail segments and to lay out a very broad management strategy. Limited budgets and manpower allowed only token management of the trail until very recently. The most notable accomplishments since 1986 include the following:

1. Dedication of the Iditarod-Anvik connecting trail
2. Construction of the Tripod Flats shelter cabin
3. Automated system for recording easements and conveyences (ALMRS) along the trail
4. Signing of cooperative agreements with federal agencies, the State of Alaska and other partners
5. Recordation of important historical and cultural sites and the start of the nomination process to NRHP
6. The beginning of a maintenance and trail marking program
7. Digitized mapping of the primary trail route

B: Deficiencies in existing plan:

Although the INHT comprehensive management plan was approved in 1986, it was actually completed in 1981. The plan is 11 years old and beginning to show its age. Assumptions made at that time are, in some cases, no longer valid. For example, Degnan v. Hodel showed that the reservation of trail easements were not as easy or as automatic as had been hoped. Historic sites thought to be significant at the time of the plan's preparation have turned out to have only a tenuous connection with the trail.

Perhaps the most significant deficiency in the plan is its lack of specificity. As a broad overall direction finding tool the plan is adequate. A more tightly focused approach is now needed to begin managing the Iditarod Trail in a logical manner.

Future planning efforts need to identify quantifiable and attainable goals. Priority setting of reasonable expectations should be encouraged rather than the generating of long laundry lists of neat things to do.

C: CURRENT ISSUES:

The following tasks and action items are an overview of what needs to be done, when it should get done, who should do it, and how much it should cost. While it is obvious that the list could be much longer and more detailed, the intent is to develop a priority list which can reasonably be completed within the next 5 years.

Task One: IDITAROD TRAIL SURVEY AND EASEMENT RESERVATIONS

Background: The Bureau of Land Management has been actively conveying lands to the State of Alaska, Native Corporations, and individuals for many years. Approximately 82% of State lands, 80% of Native Corporation lands and 86% of individual Native allotments have been conveyed. These conveyances have taken place under various authorities and acts. Unfortunately some conveyances pre-date the establishment of the INHT and do not contain a Right-of-way or easement for trail use. Some that do (i.e., ANSCA 17(b) easements) can reserve only 25 feet as a trail corridor. Options for obtaining easements for the trail include donation by owner, use of the Submerged Lands Act, purchase and donation (by non-federal entity) or action through RS 2477. Compounding this problem is the fact that much of the trail is unsurveyed and can only be described in the most general terms. Maps showing the trail are incomplete and in some cases inaccurate.

Action Items:

1.1. Complete the survey and land status analysis of the Iditarod Trail. The survey will identify (1) the physical location of the trail, (2) current land status, (3) the right-of ways purchased or otherwise acquired since 1986, (4) the rights-of-way which still remain to be acquired, (5) priority ranking for acquisition of remaining segments.

a. Map the resultant data on a GIS data base for the primary route and side and connecting trails. Obtain equipment and train personnel in the use of Global Positioning System (GPS) pathfinder units. Utilize the GPS to establish the primary route of the INHT.

b. Create multiple overlays of various data themes for these segments showing land ownership, easement status, vegetation, land forms, wildlife habitats, cultural and historical sites and other features. (see action item 9.3)

c. Reserve a federal right of way on all federal lands for the INHT.

1.2. Continue to seek voluntary donations of trail easements. Priority for easement acquisitions will be on active management trail segments. Investigate the applicability of using RS 2477 to retain public use capability.

1.3 Continue to convey lands subject to applicable regulations seeking to retain recommended easements as possible.

1.4 Coordinate with USFS and Trailblazers on new trail construction projects in the Seward area to insure easements and rights of way are retained when the property is conveyed to the State or when the State conveys to a third party.

1.5 Create a display and news releases to inform the public of the access situation and to prevent inadvertant trespass.

Task Two: COOPERATIVE MANAGEMENT AND VOLUNTEER AGREEMENTS

Background: The history of the INHT has been one of a cooperative nature. Multiple agencies, Boroughs, Corporations, volunteer groups and individuals have contributed to the overall planning and management effort. The INHT Advisory Council itself is unique within the Bureau of Land Management in that it consists of diverse groups and individuals with the goal of guiding the management of a nationally significant resource. While the history of cooperative management of the trail is good, much still needs to be done to strengthen the partnerships of trail managers. Active cooperative management needs to be defined to allow managers to be consistent in application of trail related decisions. Memorandums of Understanding are still needed with Native Corporations, Municipalities, volunteer groups and individuals. It is important that we acquire these agreements soon, so that a working relationship can begin to emerge and a commonality of purpose will result.

Action Items:

2.1. Catalog and update all existing cooperative agreements dealing with the INHT.

2.2. Continue to develop cooperative management agreements detailing management roles and responsibilities for each portion of the trail, including cooperative management agreements with Mat-Su borough, Doyon and other appropriate native corporations.

2.3. Recruit volunteer organizations similar to the Trailblazers or encourage the formation of other trailblazer chapters to assist with cabin and trail maintenance.

Task Three: ADVISORY COUNCIL MEETINGS

Background: The Iditarod National Historic Trail Advisory Council is the only advisory council of its kind in the Bureau of Land Management. The Council's charter is to advise the Anchorage District Manager (the Secretary of Interior's designated representative) on trail related issues. Recently, council meetings have been held on a sporadic basis owing to budget uncertainty and scheduling problems. It is important to build support for the INHT among communities along the trail and scheduling council meetings at a variety of locations may show these communities that the council is actively pursuing management of the resource and has the ability to respond to local concerns.

Action Items:

3.1. Schedule advisory council meetings at least twice annually. Attempt to vary the location of council meetings (contingent upon funding) so that interested groups and individuals can attend without the hardship of long distance travel. Consider the inclusion of a local interest item in the agenda for each meeting.

Task Four: TRAIL MARKING

Background: Historically the Iditarod trail route has been marked with pole tripods in treeless areas. The Advisory Council has endorsed the use of tripods where trees are not available to mark the trail. Non- standard tripods have been used in some areas due to a lack of native material and a desire to expediently mark the trail. While these efforts are laudable, future efforts should be aimed at consistency and uniformity so as to make the INHT readily identifiable. Signing and reflector use also need to be addressed, especially where the historic trail is not consistent with trails used for various competitive events.

Action Items:

4.1. Review existing trail marking standards, revise and publish INHT trail marking guidelines (as developed by the advisory council). These guidelines will address standardized sign and marker design for interpretation, location, and route finding for all trail users. Guidelines will be distributed to all groups or entities working on or responsible for management of the INHT.

4.2. Standard trail reflectors will be provided to all cooperators by the BLM for use on the INHT.

Task Five: INTERPRETATION

Background: The INHT comprehensive management plan published in 1986 provides a wealth of information for trail users. Unfortunately, this information is not in a format suitable for use by the casual visitor. A means of focusing attention on parts of the trail or significant features needs to be developed. The INHT slide/tape program is dated, inaccurate, and missing important information. Existing brochures can be improved and new ones designed to highlight specific features or parts of the trail. A self contained package of information (preferably video) should be prepared that can concisely tell the trail story and attract the attention of the viewer. Interpretive signs need to be placed at important sites along the trail and should be consistent both in design and in content.

Action Items:

5.1. Develop an interpretive plan addressing signing, media packages, communications, brochures, visitor centers, and other interpretive themes and features. The interpretive plan should consider production of:

a. A professional quality video to replace the existing slide/tape presentation. Consider corporate or other funding sources for the production of the video.

b. Articles, features or stories about the INHT (consider contacting media-representatives to prepare articles)

5.2. Write a series of articles related to significant and interesting individuals and important events associated with historic properties along the trail for publication in booklet form or mass media.

5.3. Produce a calendar or posters on INHT that emphasize cultural resource values and heritage education.

5.4. Write and publish a short history of the INHT for the general public.

5.5. Develop a program for elementary and junior high schools on cultural sites and history of the INHT.

5.6. Develop press packages for the media for use during the Iditarod sled dog race. The packages can be used as filler or background in both print and electronic media.

Task Six: SHELTER CABINS

Background: Historically, road houses and cabins were located approximately a day's journey apart along the Iditarod trail. Since the demise of many of the mining operations and the advent of the airplane for travel most of these road houses and cabins have fallen

to the elements or moved to more productive locations. Recent increased use of the Iditarod trail for competitive events and for subsistence and recreational pursuits has prompted the need to provide shelter for modern travelers. Given the distances involved and the difficulty of maintenance by the managing agency it is desirable for cabins to be maintained by local volunteer groups or individuals.

Action Items:

6.1. Develop a project plan for the Iditarod shelter cabin system. The plan will inventory existing shelter cabins, determine their suitability for continued use, identify potential locations for new shelter cabins, identify alternative methods for transportation and construction of cabins, develop priority for construction or rehabilitation, and develop cost estimates and maintenance requirements.

6.2. Identify groups or individuals willing to provide maintenance on a long term basis.

6.3. Contact race sponsors and other potential cabin users for donations of material, funds or labor.

6.4. Continue to provide periodic maintenance on Rohn and Tripod Flats cabins.

6.5. Construct new cabins at Old Woman site and Farewell.

6.6 Coordinate cabin construction and maintenance with all managing entities.

Task Seven: NEW TRAIL SEGMENT DESIGNATIONS

Background: When "The National Historic Trails" in Alaska were envisioned, Congress described the system as "Gold Rush" trails. Since designation of the Primary and connecting routes of the Iditarod several other historic trail segments have been identified as potential additions to the Iditarod trail system. Most notable of these was the Iditarod-Anvik connecting trail dedicated in 1990. The potential new additions to the system need to be identified and analyzed for suitability as components of the INHT or perhaps as separate scenic or recreational trails.

Action Items:

7.1. Develop criteria for nomination and designation of new trail segments to the INHT. Determine if trails which enhance the INHT, but are not necessarily historically significant can be included as a part of the INHT. Determine if new trails can be added for their Recreational or Scenic qualities under the umbrella of the INHT.

7.2. Coordinate with Kobuk DO and other interested parties on potential nominations of new trail segments such as historic Council-Nome trail and Alaska Sweepstakes trail.

Task Eight: PERMITTING AND TRAIL MONITORING

Background: Competitive events have taken place along the route of the Iditarod trail even before designation of the trail. The Iditarod sled dog race first took place in 1973 and has continued uninterrupted to the present. Numerous other events such as the Iditabike, Iditaski, and Iron Dog have used parts of the trail as well. Other commercial recreational uses such as guiding and outfitting are also common. Concerns have been raised that a cumulative impact may affect resources , especially wildlife, in proximity to the trail corridor. Coordination between managing agencies has been difficult due to the difference in, or in some cases lack of, applicable regulations. Trail use numbers are incomplete for commercial operations and almost non-existent for non-commercial use.

8.1. Develop standard commercial and competitive permitting stipulations and procedures for the INHT. More closely coordinate permitted and authorized activities with agencies managing adjacent lands.

8.2. Develop a monitoring plan for the INHT. The plan will establish Limits of Acceptable Change (LAC) standards for monitoring the impacts of permitted and non-permitted use on active trail segments, cabins and important historic sites. The plan will quantify the amount of commercial use occurring as a result of permitted activities.

8.3. Consider trail or site registers or some similar means of quantifying non-commercial use.

8.4 Include INHT monitoring duties for any new field positions in close proximity to the trail (i.e. McGrath or Unalakleet).

Task Nine: CULTURAL RESOURCE MANAGEMENT

Background: The INHT was designated by congress to preserve, maintain and interpret significant historic and cultural features that are a part of the early history of Alaska. Nominations to the National Register of Historic Places are proceeding, but a significant amount of work remains to be done. Historic features are being lost to weather, vandalism, and neglect. Stabilization efforts need to be prioritized and implemented and a cultural resources management plan needs to be initiated.

Action Items:

9.1. In cooperation with the State, USFS, and other affected entities complete the multiple property nomination process.

9.2. Continue to record and document trail related historic properties and update property condition reports. Organize and maintain a database of research data on trail history and trail related sites. Continue to collect historic photographs related to the trail; transcribe oral history interviews, and collect and archive documents from abandoned structures.

9.3. Computerize the historic database and tie it to the geographic database (GIS).

9.4. Complete a catalog of needed stabilization projects and prioritize the effort.

9.5. Stabilize and/or restore selected properties.

9.6. Facilitate agency and private nominations of individual sites to the National Register.

9.7 Seek and justify more realistic funding levels for cultural resources programs related to the INHT.

Task Ten: GIFT CATALOGS/PARTNERSHIPS/FRIENDS GROUPS

Background: The INHT advisory council has recommended the pursuit of a gift catalog to solicit donations of funds, materials and services from individuals and groups. In addition, solicitation of corporate sponsorship for funds, materials, and services should not be overlooked.

Action Items:

10.1. Investigate gift catalog success levels from other states and agencies.

10.2. Establish a non-profit organization or "friends group" to assist BLM and the INHT advisory council in securing tax exempt grants from large corporations directly benefitting the INHT.

10.3. Contact potential local sponsors to provide a similar type of support as that given to the Iditarod sled dog race.

10.4. Seek support from the race committee to recognize the historical significance of the INHT in media reports and news releases.

Task Eleven: AGENCY BUDGETS

Background: Historically, agency budgets have not kept pace with the agency's desire to manage the INHT. Only recently has BLM's budget showed an increase to begin implementing the approved management plan. Other agencies have not been as successful as BLM in obtaining funding for their portions of the INHT. A cooperative strategy to procure funding should be pursued to help each agency justify the cost of managing the INHT.

Action Items:

11.1. Coordinate preparation of budget submissions and justification, by agency, to seek needed funds for trail marking, historic stabilization, construction, interpretation, and easement acquisition.

11.2. Solicit advisory council assistance in requesting funding priorities to agencies.

Task Twelve: NATIONAL TRAILS DAY EVENT

Background: Saturday June 5, 1993 is the 25th Anniversary of the National Trails System Act. Throughout the US, activities and events are being scheduled to celebrate the anniversary. Organized by the American Hiking Society, the purpose of National Trails Day is to give participants the opportunity to learn about and enjoy trails and the benefits which can be derived from them. Through this event we can showcase and gain positive support for the INHT.

Action Items:

12.1. Sponsor a series of events by agency in various locations geared toward education and/or recreation (races, walkathon, nature hikes, historical displays or programs etc).

12.2. Create a display exhibit or provide an educational workshop.

12.3. Organize a volunteer labor effort to provide maintenance on parts of the INHT.

12.4. Ground breaking ceremony for new visitor and interpretive center?

12.5. Dedication of visitor center in Nome.

12.6. Erect sign in Eagle River where highway crosses the trail.

IMPLEMENTATION SCHEDULE AND COST PHASING

ITEM NO.	ACTION ITEM DESCRIPTION	RESPONS-IBILITY*	EST.COST	TARGET DATE
1.1	Survey and land status analysis	A,K		
1.2	Seek trail easements	A,K		
1.3	Continue land conveyance process	A,K		
1.4	Coordinate with USFS and Trailblazers on Seward easements	A,FS,T		
1.5	Create easement/access display	A,K		
2.1	Catalog cooperative agreements	A		
2.2	Initiate new cooperative agreements	A,AC		
2.3	Recruit volunteer organizations	ALL		
3.1	Schedule biannual Advisory Council meetings	A		
4.1	Establish trail marking standards	A,AC		
4.2	Provide trail reflectors	A		
5.1	Develop interpretive plan	A,ALL		
5.2	Write historical articles	A		
5.3	Produce calendar and posters	A		
5.4	Write short history of the INHT	A		
5.5	Develop education program	A		
5.6	Develop media package	A,AC		
6.1	Draft shelter cabin project plan	A,K,S		
6.2	Identify groups for cabin maintenance	A,K,S		
6.3	Seek cabin sponsors	A,K,S		
6.4	Provide periodic cabin maintenance	A,K,S		
6.5	Construct 2 cabins (Farewell, Old Woman)	A		
6.6	Coordinate cabin activities with all managing partners	ALL		
7.1	Develop nomination criteria for new trail segments	AC		
7.2	Coordinate Alaska Sweepstakes trail nomination	A,K,AC		
8.1	Develop standard SRP stipulations for the INHT	A,K,S		
8.2	Develop LAC Monitoring plan for INHT	A,K		
8.3	Establish methods to quantify trail use	A,K		

ITEM NO.	ACTION ITEM DESCRIPTION	RESPON-SIBILITY *	EST. COST	TARGET DATE
8.4	Develop trail monitoring duties for new positions	A		
9.1	Complete multiple property nominations	ALL		
9.2	Continue to collect and record site and artifact information	ALL		
9.3	Computerize cultural database	A		
9.4	Prioritize needed stabilization	A,S,K		
9.5	Stabilize / Restore properties	A,K,S,FW		
9.6	Facilitate nominations to NRHP	A,S		
9.7	Seek additional funding for cultural program	A,K		
10.1	Investigate gift catalogs	A,K		
10.2	Establish "Friends" group for INHT	AC		
10.3	Seek sponsor support for INHT	AC		
10.4	Seek recognition from race committee	AC		
11.1	Coordinate budget submissions and justifications	ALL		
11.2	Advisory Council assistance in funding	AC		
12.1	Sponsor NTD events	ALL		
12.2	Create INHT display for NTD	A		
12.3	Organize volunteer labor effort	ALL		
12.4	Visitor center ground breaking	ALL		
12.5	Dedicate Nome visitor center	ALL		
12.6	Dedicate sign in Eagle River	ALL		

* denotes agency

A	Anchorage District BLM	K	Kobuk District BLM
FS	US Forest Service Chugach NF	FW	US fish and Wildlife Service
T	Iditarod Trailblazers	S	State of Alaska
AC	Advisory Council	ALL	All managing agencies

VILLAGE CORPORATION ADDRESS/PRESIDENTS

BREVIG MISSION
P.O. Box 85024
Brevig Mission, AK 99785
Elmer Olanna, Pres.
642-4091

COUNCIL
P.O. Box 2050
Nome, AK 99762
Carolyn Schubert, Pres.

GOLOVIN
P.O. Box 62099
Golovin, AK 99762
Peggy Hardy, Pres.
Irene Sockpealuk, GM
779-3251 Fax 779-3261

KING ISLAND
P.O. Box 992
Nome, AK 99762
Gabriel Muktoyuk, Pres.
Loretta Muktoyuk, GM
443-5494

KOYUK
P.O. Box 50
Koyuk, AK 99753
Elvina Swanson, Pres.
Arlene Charles, GM
963-3551 Fax 963-3552

INALIK
General Delivery
Diomede, AK 99762
Thomas Menadelook, Pres.
686-3221

MARY'S IGLOO
P.O. Box 572
Teller, AK 99778
Ost Okleasik, Acting Pres.
Sarah Okbaok, Staff
642-3731

SHAKTOOLIK
P.O. Box 46
Shaktoolik, AK 99771
Eugene Asicksik, Pres.
Arlene Sookiayak, GM
955-3241 Fax 955-3243

SHISHMAREF
General Delivery
Shishmaref, AK 99772
Percy Nayokpuk, Pres.
Luci Eningowuk, ED
649-3751 Fax 649-3731

SITNASUAK
P.O. Box 905
Nome, AK 99762
Robbie Fagerstrom, Pres.
443-2632 Fax 443-3063

SOLOMON
P.O. Box 243
Nome, AK 99762
Rose Ann Timbers, Pres.
443-2844

ST. MICHAEL
P.O. Box 59049
St. Michael, AK 99659
Milton Cheemuk, Pres.
Arlene Acoman, GM
923-3141

STEBBINS
P.O. Box 110
Stebbins, AK 99671
John Nashoanak, Pres.
934-3074 Fax 934-3560

TELLER
P.O. Box 509
Teller, AK 99778
Norman Menadelook, Pres.
642-4011

UNALAKLEET
P.O. Box 100
Unalakleet, AK 99684
Martha Aarons, Pres.
Robert Gilley, CEO
624-3411 Fax 624-3833

WALES
P.O. Box 529
Wales, AK 99783
Walter Weyapuk, Pres.
Winton Weyapuk Jr., GM
664-3641

WHITE MOUNTAIN
P.O. Box 81
White Mountain, AK 99784
Aaron Jackson, Pres.
443-2474

ALASKA MENTAL HEALTH LAND TRUST
CHRONOLOGY

1956 - Federal government grants territory of Alaska one million acres to be held in public trust to pay for Alaska's mental health programs and facilities.

1959 - Trust transferred to state at statehood.

1959 to 1978 - State does not effectively manage the Trust and, instead, disposes of some of Trust properties for residential and commercial development, and places 164,400 acres in legislatively designated parks and refuges.

1978 - State Legislature dissolves the Trust (approximately 775,000 acres). Under DNR management, more Trust lands are sold, given away, or made into parks. Many remaining lands are encumbered by various leases and mining claims.

1982 - Mental Health advocates sue charging state had no right to dissolve the Trust.

1985 - Alaska Supreme Court agrees with mental health advocates and orders state to put the Trust back together again. Provides guidelines for the reconstitution.

1986 to 1987 - Several mental health groups intervene in lawsuit.

1987 to 1990 - Rather than follow Court guidelines, which are somewhat nebulous and therefore raise the threat of further lawsuits, legislature chooses instead to attempt various out-of-court settlements. All are unsuccessful.

1990 - Judge orders injunction against any further land transfers or permits on original Trust lands to preserve status quo until Trust can be reconstituted. Injunction, as well as a Notice of Lis Pendens, clouds land titles and inhibits further resource development on affected lands.

1991 (May) - State and three mental health lawyers negotiate a proposed settlement to remake the Trust from the state's multiple-use public lands (Chapter 66, SLA 91). Legislature receives and approves the highly complex deal during final four days of session. Legislation is to become effective if, and when, the court approves the proposal, and after all opportunity for appeal is exhausted.

As part of deal, state agrees to immediately set aside 6.7 million acres of some of the state's most valuable and accessible natural resource land as collateral to insure that the state will follow through on land trades as well as on a series of 12 annual payments. Development activity is restricted on lands held as collateral.

1991 (October) - Eight widely diverse public interest groups (including recreation, environmental, tourism, and community organizations) opposing the proposed settlement intervene in lawsuit.

(over)

1992 (Summer) - Mental health lawyers and state proceed with implementation of settlement proposal even though court has not yet approved it. Mental health lawyers start identifying state public land they want for the Trust including land that is highly sensitive to certain municipalities and land with Cook Inlet oil and gas leases. Once identified, development activities are restricted on the lands.

1992 (September) - Cook Inlet oil companies file to intervene in lawsuit.

1992 (September 28) - ??? After 16 months, the judge has yet to rule on the proposed settlement, or on any of the numerous issues and challenges raised by the proposal. Additional interventions are expected, with each intervention causing more complexity, confusion, and delay.

Rather than being a "settlement" of the Trust issue, Chapter 66 is, instead, a lucrative playing field for an extended legal battle that will go on for years. In the meantime, millions of acres of state land will continue to be held hostage until the battle is over.

SOUNDS BAD! . . . WHAT ARE OUR OPTIONS?

Alternatives:

- **Legislatively amend the existing settlement proposal NOW.** There is an alternative proposal for reconstituting the trust which could be accomplished by amending Chapter 66. The alternative has broadly based support among people on all sides of this issue, including development interests, environmentalists, the mental health community, and recreationists. It is based on existing legislation so the necessary components are already in place. New funding is not required. No land exchanges are involved so the land hostages would immediately be released.

- **The other alternative is to continue with the proposed settlement even though it's in deep trouble and everyone seems to be opposing it.** After an unknown number of years of litigation, if the proposal doesn't collapse under its own weight first, **the judge will do one of two things**:

  (1) **Approve** the proposed settlement, in which case appeals will continue for a number of years. Over 8 million acres of state public land will continue to be tied up in knots until the last appeal. Millions of dollars that could be better spent paying for mental health programs will be spent on legal fees.

  (2) **Reject** the proposed settlement, in which case either the administration continues the lengthy process of litigating the lawsuit according to the guidelines of the Supreme Court (see 1982 and 1985 above), or the legislature proposes another out-of-court settlement and we start over. In the meantime, millions of dollars will have been wasted preparing for a costly land exchange that never takes place.

MAT-SU TRAILS COUNCIL, INC.
P.O. Box 2356 Palmer, AK 99645

April 13, 1992

Harold Heintze
State of Alaska Commissioner of Natural Resources
P. O. Box 400
Willoughby Avenue, Fifth Floor
Juneau, Alaska
99801

Re: Effect of mental health Lands settlement on trails and access in Matanuska-Susitna Borough

Dear Mr. Heinze:

I just read an article in The Frontiersman about possible state land disposals in this borough as part of a mental health settlement. It looks like these disposals, if they occur, might cut off many existing trails in the Susitna Valley. After discussing the article with other Mat-Su Trails Council members we thought we ought to obtain more facts from the state.

1. Vacation or abandonment of existing accesses. Will existing accesses through land conveyed by the state to the mental health trust be cut off? Will the accesses of holders of open to entry parcels be cut off? Will dogmushers be blocked from using their trails?

2. Reservation of trail and other rights of way. If the trails and rights of way described in the first question will be preserved how will this be done? Will there be guarantees in the settlement and conveyance documents to insure that accesses and rights of way will not be cut off? Would the state use:

(a) General reservation. a general reservation of public rights in existing trails and accesses in the deed of conveyance from Natural Resources to the Mental Health Trust as provided for in the settlement agreement? (The 1971 Alaska Native Claims Settlement Act handled right of way claims in this way often with unsatisfactory results for the trail users.)

(b) Specific trails easements. reservations of specifically described rights of way in the settlement agreement? In the deed of conveyance? In documents to be created between the date of settlement and the date of conveyance?

(c) Identification of trails to be reserved. If the specific named rights of way are to be reserved does Natural Resources know which ones will be reserved? If so, which ones will they be?

(d) Extinguishment of rights of way. Would the reservation of specific named rights of way be intended to extinguish public

rights in all trails and rights of way not listed? Would this be expressed in any document? Which document?

(e) State protection of rights of way in court. If, with respect to a specific parcel or group of parcels, the Mental Health trustees or their successors in interest attempted to block an existing trail such as an RS 2477 trail would Natural Resources be willing to go to court to establish the public's continued rights in the right of way?

In the past the state has been willing to go to court to assert right of way claims against persons who claimed that rights of way were extinguished by conveyances from the federal government to homesteaders. Burma Road in the Big Lake area is an example. The state by going to court was able to get that road unblocked in the late 1960's. Would the state be equally willing to take the mental health trustees to court if a similar access issue came up?

(f) Public notice and hearing. If, after a settlement is entered into and approved by the court and before the conveyance of state land to the Mental Health Trust, all of the existing trail and access rights in which the public has an interest have not been identified and reserved, would Natural Resources publish notice of intended conveyances, proposed rights of way and hold public hearings before proceeding with a conveyance so that trail users and owners of Open to Entry parcels could assert their rights in trails and access?

If there will be a provision for public hearings before vacation or abandonment of trails in which document will this provision be incorporated?

(g) Appeals. If the state, the Matanuska-Susitna Borough, the Mental Health trustees or a trail user does not agree with a Natural Resources or mental health trustees' decision what appeal would there be for the aggrieved party? Would this right to appeal be incorporated in any document? Which document?

3. Conflicts with Susitna Basin Plan. Will, as a result of the settlement of the mental health lawsuit, any part of the Susitna Basin Plan agreed to by the state and the Matanuska-Borough in the mid-1980's be abandoned or repudiated with respect to lands conveyed to the Mental Health Trust?

If the answer is yes which part of the plan would the state repudiate? Or if only a portion of the plan is to be repudiated by the state with respect to parcels conveyed to the Mental Health Trust, which provisons will be repudiated?

Would this repudiation be expressed in any specfic document such as an unilateral amendment of the Susitna Basin Plan by the state?

Would the state follow the procedures in the agreed upon

existing Susitna Basin Plan before proceeding to an amendment of the Plan and before any final conveyance of lands to the trust?

4. **Management of lands held in trust by Natural Resources.** After approval of the final settlement and before conveyance of state land to the Mental health Trust, a period which might last as long as eight years, would the Department of Natural Resources approve of any upgrades such as construction of bridges or reroutings of existing accesses? For recordation of formal right of way documents resulting in formal dedications of rights of way as in the case of the National Iditarod Trail? For mining and mining access purposes? For National Recreational Trail designations? For any other purposes?

If the answer is partly yes and partly no which trail activities and upgrades would Natural Resources be willing to approve (assuming it would have approved them if the lands had not gone into trust status) and which ones would it not approve because the lands are in a trust status?

5. **Blocking of hunting and fishing access.** Would the Mental Health Trust be able to ban hunting and fishing in Susitna Valley lands it obtains as suggested in the **The Frontiersman** article and create private hunting areas? Would it be able to use the lands it acquires to block hunting and fishing access to lands which remain in public ownership? This type of blockage has often occured in Wyoming - areas such as Elk Mountain northwest of Laramie where intervening owners have blocked roads and trails in order to charge heavy hunting fees.

6. **Risks to specific trails.** Might a conveyance by the State of lands designated for possible conveyance to the Mental health Trust block the following trails and accesses if title to lands which they cross is conveyed to the Trust?

(a) **Petersville Road area.** There are a number of dogmushing and other trails which take off from Petersville Road and head south along Peters Creek and south and west toward the Kahiltna River. These include the historic Collinsville Trail, a trail (old mining road) which leaves the Petersville Road at mile 19 where it crosses Peters Creek by a steel truss bridge and heads to the old Collinsville gold mining district, the Kahiltna River Trails along Peters Creek (which becomes part of the MacDougal-Cache Creek wagon road which runs from the mouth of Lake Creek on the Yentna River to the Petersville Mining District, and the Black Creek Trail at the Forks Roadhouse on Petersville Road.

These trails, in addition to being historic trails going back to early gold mining days, are popular dogmushing trails which many dogmushers preparing for the Iditarod race train on. Will these trails be protected as they cross state lands which may later be conveyed to the Mental health Trust? If so how will they be protected? In which document?

(b) **Oil Well Road.** There is an existing trail from the south

end of Oil Well Road to Ambler Lake, a state subdivision, and there are various dogmushing trails in the vicinity of Moose and Kroto Creeks. would these trails be protected?

(c) Open to entry parcels. There are a large number of open to entry parcels ~~which~~ north and west of Trapper Creek and north of the Talkeetna River. Some of these have year round residences. Will the existing accesses which the owners of these and other OTC parcels use to get to and from their cabins be preserved? In which way? In which document?

I hope you agree that the state is in no position to enter into a binding agreement with respect to lands in the Matanuska-Susitna Borough proposed for possible conveyance to the Mental Health Trust until it is in a position to provide answers to these questions.

If the state has the answers at this time we would appreciate having them. If it intends to obtain the answers before entering into a final agreement we would like to know the approximate time it would have the answers. If it intends to enter into a final agreement without having the answers we would like to know that too.

Sincerely,

John E Luster

John Luster
President

cc: Mayor Ernest Brannon, Mat-Su Borough
The Frontiersman
Chairman, Mat-Su Borough Planning Commission
Chairman, Mat-Su Borough Trails Committee

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF LAND

3601 C STREET
P.O. Box 107005
ANCHORAGE, ALASKA 99510-7005
PHONE: (907) 762-2692

Copy to John

May 14, 1992

The Honorable Jay Kerttula
Alaska State Senate
State Capitol
Juneau, Alaska 99801-1182

Dear Senator Kerttula:

Commissioner Heinze requested that I respond to you concerning the effect the mental health land settlement will have on trails and access. These questions were raised by John Luster representing the Mat-Su Trails Council, Inc. My responses following the numbering format of Mr. Luster's questions.

1. **Vacation or abandonment of existing access.** Known access routes will be protected either by reserving or excluding them in title documents. If access routes are being used that are not documented on state land records, we will not be able to protect them. It is important for private property owners and users of state land to inform us of all existing access routes.

2. **Reservation of trail and other rights-of-way.** (a & b) Specific locations and legal descriptions will be used. General, or vague, reservations will not be used. (c) We will not know what right-of-ways to reserve until we know what land will be conveyed. Public notice of all land to be conveyed, along with any reservations or exceptions, will be held prior to the land being conveyed. (d) If a right-of-way, or any other interest, is not specifically reserved, the land being conveyed is not subject to them. This does not extinguish any other valid rights. It may require, however, court action to "validate" that right. (e) The state may go to court to validate rights-of-way, but only if it is the state's best interest. For example, a right-of-way that receives very limited use, is expensive to maintain, and alternate access is available, would probably not be asserted. (f) Any valid right-of-way that is to be vacated requires by law that public notice be given and a public hearing be held. (g) Any administrative decision made by the director of this division is appealable to the commissioner. The commissioner's decision is appealable to state Superior Court. The provisions for this are contained in regulation (11 AAC 02). The right to appeal is incorporated in our "best interest finding" documents that are required by law for all land conveyance decisions.

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3. **Conflicts with the Susitna Basin Plan.** Prior to conveying land to the Mental Health Trust Authority, we will review the land use designations and management intent in our adopted area plans to make sure the public interest is protected. We will be conveying the land subject to such things as setbacks, public use easements, and identified rights-of way. Once the land is conveyed, however, the land is to be treated as private land and will not be subject to the state's land use plans. The land will be subject to local zoning and platting requirements.

State land use plans only apply to state owned land. The Susitna Area Plan was adopted in June, 1985. That plan mainly focused on land disposals. Since that time, many changes have occurred in land ownership patterns, there is less demand for land disposals, and an increased awareness of forestry, agricultural, grazing, and recreation issues. The Susitna Area Plan will need to be updated in light of all these issues.

4. **Management of land held in trust.** The department will manage all trust land in a pro-active manner. We will work with the Mental Health Trust Authority to issue authorizations the same as we would on general state land. The only difference will be that any authorization that we issue cannot by law diminish the value of the land to the trust. Upgrades, such as construction of bridges and new routes to improve access would normally be approved.

5. **Hunting and fishing access.** Before conveying land to the Mental Health Trust Authority, we will make sure that legal and practical access is reserved so that state land can be accessed for hunting, fishing, and other uses. The Authority, acting as a quasi-state agency, should have no interest in restricting use and development of adjoining land. In addition, the Mental Health Trust Authority is subject to legislative oversight and legislation to ensure that the overall public interest is protected.

6. **Risks to specific trails.** (a) Petersville Road will be protected and excluded from any conveyance documents. (b) Oil Well Road will also be protected and excluded from conveyance documents. We will review the various dog mushing trails prior to conveyance to determine which should be reserved. In general, duplicative trails, trails used by only a few members of the public, or where other alternatives are available will not be reserved. (c) Legal and practical access to state created interests, such as Open-to-Entry and Remote Parcels will be protected in conveyance documents.

We are committed to making sure that reconstitution of the mental health trust lands is completed in a timely manner and as envisioned by Chapter 66 SLA 1991. It will be done in a manner that does recognize and protect legitimate public interests such as access. Please contact me if you have any further questions.

Sincerely,

Ron Swanson
Director

cc: Harold C. Heinze, Commissioner
John Luster
Don Moore, Mat-Su Borough Manager
The Frontiersman

Alaska Journal of Commerce

Analysis

August 17, 1992

Is there a solution to this lands trust mess?

By Tim Bradner
Alaska Journal of Commerce

The settlement deal struck between mental health plaintiffs and the state earlier this year — and the 1991 legislation it was based on, make a bad problem even worse — groups who oppose it argue.

What's bad in the deal is the attempt to replace lands lost from the original trust on a value-for-value basis, instead of acre-for-acre.

Since much of the valuable trust lands in urban areas, or near established communities, were sold or transferred to third parties just before or after the trust was dissolved by the legislature in 1978, a substantial amount of "replacement land" will have to go into the trust to compensate for lost value.

"It may take hundreds of acres of rural lands to compensate for the value of a few acres on the Homer spit," said Lois Reeder, who heads the Susitna Valley Association, one group opposing the settlement.

The uncertainty this creates for land-users, including resource companies and other developers, recreation or environmental groups, is that millions of acres of state lands remain in limbo as long as the land exchanges continue.

An added twist is litigation filed by intervenor groups, including Reeder's association, which challenges several key parts of the 1991 legislation.

Those questions will have to be resolved before the settlement can even be implemented, which triggers the start of land exchanges, Reeder said.

State Attorney General Charlie Cole and former State Resources Commissioner Harold Heinze were the architects of the 1991 legislation, which passed in both houses of the Alaska Legislature's closing days.

Their motivation was to try and settle the long-standing issue with a land-based settlement, re-creating the land trust in a way that would produce income to help support mental health services in Alaska, which was the original intent of the land trust when it was created by Congress in 1956.

The alternative, actually preferred by the mental health groups, would have been a settlement that also included money, a cash settlement as well as restoration of some lands to the trust. But in 1991, uncertainty over oil revenues caused Gov. Walter Hickel to steer clear of a cash-based settlement.

Another approach, tried in 1992, called for a simpler solution. As originally proposed, it would restore about half a million acres of original trust lands and guarantee mental health groups funding level of six percent of unrestricted state revenues, an amount somewhat higher than current spending levels.

Two of the four plaintiff groups, conservation and recreation groups who intervened, and resource development groups, supported the alternative, but the legislation failed to move when Attorney General Cole assurred legislators the governor would veto the bill.

Most still believe the alternative proposed last year is a quickest and easiest way out of the mess.

"We have a hard time seeing that there is a way out on this, except for the alternative approach suggested last year," said Bob Stiles, repesenting Diamond Alaska Coal Co.

Jim Gottstein, attorney for one of the plaintiff groups that had endorsed the settlement, said his clients also would probably favor the alternative. But since Gov. Hickel threatened to veto the bill, his remaining option is to stick with the current deal.

Commentary

THE ALASKA JOURNAL OF COMMERCE
March 30, 1992

The Hickel administration's hot potato: stick a fork in it, it's done

Mr. Cole and Mr. Heinze continue to pursue implementation of last year's mental health land trust settlement, which most people now recognize as unworkable. The ensuing litigation, dedication of valuable mineral lands as security, and user conflicts are destined to achieve the opposite of what the administration hoped to accomplish when it proposed this resolution to the Legislature last spring.

By Loisann Reeder

It becomes more clear every day that the mental health land trust settlement is far from settled. One problem after another keeps surfacing.

For instance, one of the primary reasons for adopting the proposed settlement last spring was to clear title on lands that had been in the original 1 million-acre trust. That laudable intent now appears to have backfired. Rather than freeing up the original trust lands, the proposed settlement has instead tied up development on an additional 6.7 million acres, for an indeterminate number of years.

How did this happen? There are two contributing factors: lack of trust between the parties negotiating the settlement, and legal challenges.

The first factor relates to an apparent lack of trust between the state and the mental health attorneys. The mental health attorneys contend the state has been less than dependable in following through on previous attempts at settlement of the trust dilemma.

This dilemma was created when the state illegally dissolved the original trust in 1978. The trust had been established by the federal government 22 years earlier to fund the state's mental health programs and facilities. In 1985, the Alaska Supreme Court told the state it had to reconstitute the trust and provided guidelines for doing so. Rather than following the guidelines, however, which likely would have just led to additional lawsuits, the state has been coming up with various settlement schemes.

In the latest proposal, adopted at the end of the last legislative session, the mental health attorneys demanded that the state provide some kind of guarantee that the state would actually follow through on its promises to replace certain trust lands with exchange lands and to complete a series of required payments.

That guarantee was obtained by identifying 6.7 million acres to be held as collateral until all obligations have been met. On the list are some of the state's most valuable mineral and coal lands, all accessible timber lands, all the Cook Inlet oil and gas leases, and the state's entire pool of settlement and subdivision lands. Even though the mental health attorneys can select exchange lands from the security pool, sufficient lands must always be retained in the pool to cover remaining exchanges, as well as to cover 12 years of required payments that total an estimated $1 billion. That adds up to a lot of land!

The second contributing factor, legal challenges, increases the length of time the lands will be tied up. The proposed settlement is so complex, involving millions of acres of public lands, existing leases and conflicting land uses, that it invites lawsuits. Also, because the public and industry interests have been kept out of the negotiating process, they have no recourse but to attempt resolution of their concerns in the courts.

A lawsuit has already been filed by eight public interest groups claiming the proposed settlement is unconstitutional and in violation of the statehood act. A number of very legitimate and complex issues have been raised that will put the proposed

Let's try another solution to mental health lands trust: a commentary

settlement in litigation for years until all appeals have been exhausted. There is no settlement until after all these issues have been resolved. And even if the public interest intervenors should lose on all points (which is highly unlikely), further litigation is anticipated once the state starts attempting land exchanges.

During the years of legal battle, even if the state is allowed to move ahead with certain development activities on the collateral lands, it must not allow any activity that might devalue the property. Any and all proposed activities must first be approved by the mental health attorneys, who will understandably hold the state responsible for any actual or perceived loss of value.

It quickly becomes apparent that rather than having 1 million acres tied up, we now have ~~five~~ eight times that amount being held hostage, for who knows how many years. Instead of one bureaucracy to deal with, there are now two. No one knows who will eventually own the various tracts. Would anyone be willing to invest in development on such lands?

To get around all these problems, an alternative settlement proposal was recently announced by several mental health and public interest intervenor groups that is rapidly gaining broad-based support.

The basic components of the alternative settlement are: up to half the original trust lands would be returned to the trust, those lands with clear title and which have not been placed in legislative designations; provisions for trust management and mental health program priorities that have previously been adopted, would be retained; a percentage of the unrestricted general fund would continue to be allocated to fund mental health programs, as is presently required by law, and which everyone agrees the state will be doing anyway; and 316,000 acres of legislatively designated lands located on original trust lands would be held as security to make sure the state continues to meet its annual payments.

The alternative does not require land valuations or land exchanges (so eliminates those lawsuits), has a better chance of providing necessary mental health funding, will be far less costly to implement, and eliminates or diffuses the public interest concerns that have been raised. Most importantly, it is based on existing legislation so the necessary components are already in place. New funding would not be required.

The lands being held as collateral would immediately be released. As soon as receiving court approval, the alternative would also provide immediate and permanent injunctive relief for all original trust lands owned by third parties, including municipalities.

So, what's the problem? The legislators find this whole issue terribly complex and confusing (don't we all!), and they hesitate to revisit it unless they know Commissioner Heinze and Attorney General Cole are on board. So far the administration has indicated no interest in discussing alternatives.

Instead, Mr. Cole and Mr. Heinze continue to pursue implementation of last year's settlement, which most people now recognize as unworkable. The ensuing litigation, dedication of valuable mineral lands as security, and user conflicts are destined to achieve the opposite of what the administration hoped to accomplish when it proposed this resolution to the Legislature last spring.

We can only hope they, too, will recognize the inherent problems in such an approach and instead will be willing to sit down and look at a new deal now that everyone's had a dose of reality. Surely the administration will recognize that all parties, in agreeing to the alternative proposal, have been willing to make major concessions to get around the insurmountable obstacles and negative impacts inherent in the proposed settlement adopted last spring.

The components are there for a more responsible and reasonable settlement acceptable to all parties. It's time to get this issue resolved and behind us, rather than dragging it on for many more years of divisive litigation.

Loisann Reeder is president of the Susitna Valley Association, a coalition of organizations and individuals with concerns related to land management in the Susitna Valley.

NEWSPAPER—DO NOT DELAY
Mailed Aug. 13

THE ALASKA
JOURNAL OF COMMERCE

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Mental health litigants claim Cook Inlet leases

The chill on Alaska land status created by mental health lands litigation is widening and now affects about 8 million acres of state lands.

Coal projects and individual Alaskans who own land formerly included in the mental health trust have been affected all along. Now oil and gas leases in Cook Inlet have been drawn in.

In the latest development, litigation groups in July nominated 140,000 acres of offshore and onshore Cook Inlet basin state oil and gas lease tracts as substitute lands proposed for reconstituting the million-acre mental health land trust, which was dissolved by the state legislature in 1978.

In an earlier round of nominations, in late June, 163,721 acres of other state lands including land for expansion of ski areas near Girdwood and 26,640 acres of state timber lands, were also nominated.

This acreage was added to 6.7 million acres of state lands already reserved for possible exchanges and the million acres of lands originally part of the trust, the status of some 8 million acres of state lands are now in limbo until the issue is finally resolved.

Three of four mental health groups who brought the original litigation have agreed to a settlement with the state. But new issues raised by the intervention of conservation, recreation and landowner groups threaten to tie up the settlement for several years.

Meanwhile, Fairbanks Superior Court Judge Meg Greene has yet to rule on whether the settlement, reached earlier this year after the Legislature passed a 1991 law allowing creation of a new lands trust, meets the terms of a 1985 state Supreme Court decision. The court rules the 1978 dissolution of the original land trust was illegal, and ordered the Legislature to re-create the trust.

Even though the settlement has not yet been approved, lands being nominated by the plaintiffs is the beginning of the bargaining over lands to reconstitute the trust.

Oil companies who operate in the Cook Inlet basin are nervous over the latest move because agreements between the state Department of Natural Resources and plaintiffs who have signed on to the state settlement give those groups the right to approve state lease management decisions on proposed substitute lands. They also gain access to confidential oil and gas reserve data, including exploratory well information.

The companies may intervene in the case to protect that data.

"The state has agreed to release confidential information to parties who have agreed to the settlement," said Peter Maassen, of the law firm of Burr, Pease, and Kurtz. "In our opinion, that's in violation of state statutes protecting confidentiality." Maassen said his clients are considering intervention. ①

But obtaining information on remaining economic reserves in inlet leases, as well as new discoveries, is crucial to determining the value of those leases as exchange lands, said Jim Gottstein, an attorney for mental health groups in the litigation.

"We have to see what those leases look like in terms of remaining production, and revenues. We have a confidentiality provision in the settlement agreement," that would protect the information, Gottstein said. The data would be reviewed by Cass Ariey, a local consulting geologist.

The concern oil operators have about being included in the reconstituted trust is that it will likely remove the broad discretion that the commissioner of natural resources has over development on state oil resources.

What disturbs many landowners are the potential complexities in land administration raised by Department of Natural Resource's Order 135. It provides that any transaction such as sales, leases, exchanges, land-use permits and interim management agreements on original trust land and 6.7 million acres held as potential replacement lands must now have two additional layers of approval—plaintiff groups and the superior court.

The order also provides that any transaction involving substitute lands nominated by the plaintiffs must have their approval.

"The biggest problem is that people don't know what the words in DNR Order 135 mean," said one attorney for a major oil company, who asked to not be identified. "It would appear to extend third-party approvals to lease activities such as approval of plans of development. It would definitely affect development of new discoveries, like ARCO's Sunfish project and Stewart Petroleum's new discovery."

Bob Stiles, who is heading up Diamond Alaska Coal Co.'s efforts to develop a large mine in the Beluga coal fields across Cook Inlet from Anchorage, says the Cook Inlet port site preferred by Diamond is covered by an oil and gas lease nominated by the plaintiffs. Even though the interest of the plaintiffs is in mineral rights, DNR's Order 135 appears to restrict surface access as well, he said. "We just don't know what the implications are," he said.

Ron Swanson, state lands director, said that day-to-day land actions haven't been impeded, so far. "It takes a little longer, because there's an extra hoop or two, but it hasn't delayed any development."

Swanson said he is concerned about an upcoming state oil and gas lease sale in Cook Inlet, but a more critical problem is how the litigation affects the "moms and pops," the individuals owning parcels of some 50,000 acres of state lands transferred to third parties as residential, recreation or business properties.

A lis pendens, legal Latin for a litigation pending notice, has been filed

By Tim Bradner
Alaska Journal of Commerce

① They have intervened.

Mental health litigants want oil lease tracts

on all lands formerly in the 1-million-acre trust. This effectively clouds title, preventing the sale or new financing on many properties.

"Innocent third parties should not be affected by this," Swanson said. "If anyone is held prisoner, it should be the state."

In the long run, the concern oil operators have about being included in the reconstituted trust is that it will likely remove the broad discretion that the commissioner of natural resources has over development on state oil leases.

"Once the trust obtains title, it must manage lands to the highest fiduciary standard, which narrows discretion. The only option the administrator has is to obtain the best deal for the trust, which usually means money."

For example, agreements for royalty reduction on marginal properties, to help sustain production and jobs, would be much more difficult if the oil leases were under trust ownership. "The commissioner makes decisions in the overall public interest, which allows things like jobs to be taken into consideration. The trust cannot consider job-creation."

Coal projects have been affected all along, since state lands with significant coal deposits in Interior and Southcentral Alaska were in the original mental health land trust set up in 1956, and are sure to be included in a new trust, ordered to be reconstituted by a 1985 state Supreme Court order.

The Wishbone Hill coal mine north of Palmer was to have begun construction in 1990 and production this year, but a superior court injunction stopped all permits on former mental health lands, including a state mining permit that was critical for Wishbone's schedule. In construction and production, the mine would have employed about 200.

Plaintiff groups subsequently agreed to let the permit be issued. But the mine developer, Idemitsu Alaska, Inc., subsidiary of the large Japanese energy firm, Idemitsu-Kosan, will now wait until the complex issue is resolved before it begins work anew on project development, because of the continued uncertainty as to who the ultimate landowner will be on part of the coal leases in the mine, and what royalty rates will be established.

Gottstein said he feels state royalties on coal leases are low, but added these decisions would be made by the new mental health trust authority to be created by the settlement.

"We think the state royalty on oil and gas leases are pretty fair, but on coal, the state royalty is quite a bit below the federal coal royalty rate," Gottstein said. But he felt the trust "would likely work with developers to get projects going, striking a deal fair to both parties. We would want to have something that made sense for the coal developer and the landowner."

State coal royalties are 5 percent of the value of the coal at the mine, which is low in comparison to state tax and royalty burden on coal in other states, he said. Coal royalty on federal lands is 12 percent.

Coal projects have been affected all along, since state lands with significant coal deposits in Interior and Southcentral Alaska were in the original mental health land trust set up in 1956 and are sure to be included in a new trust, ordered to be reconstituted by a 1985 state Supreme Court order.

Stiles, representing Diamond Alaska, said it is the uncertainty over land status and royalty rates, as the litigation drags on, that is chilling prospects for new coal mines.

"It is absolutely an impediment to our marketing this project," he said. "Under any scenario, we'll wind up being included in the new mental health trust, but the issue is when that will happen. Until the settlement is done, we sit here in a state of limbo."

Stiles said his company is close to getting all the permits needed for the project, but uncertainties over land status and future royalty rates make the project even a tough sell to Pacific buyers.

"Land tenure is not a risk the coal market is used to dealing with. Prices in coal markets do fluctuate, and buyers in a long-term contract want to make sure you stay in business. If your costs go up, and you're back trying to renegotiate the contract, it gets very messy. Perceived instability in royalty rates gives a reluctant customer a good reason to say no."

Stiles said the problems raised for coal projects by the mental health litigation are well known among potential Asian buyers; Alaska's competitors, such as Australia, Indonesia, and Canada, are quick to point them out.

Alaska's case wasn't helped by the halting of Idemitsu Kosan's project at Wishbone Hill by the 1990 court injunction, just as construction was about to get under way.

"Alaska is a marginal producer in Pacific coal markets. We have to fight to unhorse some very heavy competition to get a foot-hold in the market. If there's any way to still-birth an industry, this is it."